

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for Renewal of)	
a Dispenser Class A (DA))	
License by:)	FINAL
)	FINDINGS OF FACT,
Richard and Sunya Porter)	CONCLUSIONS OF LAW,
PORTERHOUSE)	AND ORDER
331 Fifth Street)	
Madras, Oregon 97741)	
- - - - -)	
Jefferson County)	

A hearing in the above matter was held on the 26th day of January, 1983, in Madras, Oregon, and on the 16th day of March, 1983, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were represented by D. Michael Mills, Attorney at Law. The Commission was represented by legal counsel. The record of the hearing was held open through April 28, 1983 for the receipt of additional documentary evidence from the Applicants. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations; enters the following:

FINDINGS OF FACT

1. Richard and Sunya Porter applied for renewal of a Dispenser Class A (DA) license at the PORTERHOUSE, 331 Fifth Street, Madras, Oregon. This application is for the license renewal year beginning October 1, 1982. The Applicants have continued to operate the Porterhouse under authority from the

Commission pending a final determination on the renewal application. Subsequent to the March 16, 1983 hearing in this matter, the Commission approved Mr. Porter's application to withdraw as an applicant and licensee at the Porterhouse.

2. The Commission's Licensing Staff has recommended that the Applicants' renewal application be refused, citing the following:

- a. ORS 472.160(1) (not demanded by public interest or convenience).
- b. ORS 472.160(4)(d) and OAR 845-05-025(7) (Applicant Richard Porter convicted of a felony).
- c. ORS 472.160(4)(b) and OAR 845-05-015(3) (Applicant has made false statements to the Commission).
- d. OAR 845-05-025(4) (Applicant has less than or is unable reasonably to project at least 25 percent food sales).

(Commission's Exhibit K.)

Findings Concerning Felony Convictions

3. On or about November 23, 1981, Richard Porter was convicted in the Jefferson County, Oregon Circuit Court on a charge of "Wrongful Acceptance of Payment from Adult and Family Services Division," a class C felony.

4. As a result of the November 23, 1981 Oregon conviction noted in the Finding of Fact above, Richard Porter was sentenced to 90 days in jail and to 500 hours of community service. Mr. Porter has satisfied the sentence.

5. On or about February 22, 1982, Richard Porter was convicted in the United States District Court of the District

of Oregon for the offense of "Knowingly and Intentionally Distributing a Quantity of Codeine Phosphate, a Schedule III Narcotic Drug Controlled Substance," a schedule III felony.

6. As a result of the February 22, 1982 federal conviction noted in the Finding of Fact above, Richard Porter was sentenced to three years in prison with a one year minimum. Mr. Porter is presently on parole as a result of the federal conviction.

7. Richard Porter entered federal prison on March 8, 1982 as a result of the February 22, 1982 conviction noted above. Mr. Porter was released from federal prison and placed on parole on December 17, 1982.

8. Richard Porter is presently unemployed. The only thing that Mr. Porter does at the Porterhouse at present is limited janitorial and maintenance work. He does not participate in the operation of the premises. He advises Mrs. Porter regarding the business but does not personally run the the business.

9. Richard Porter wishes to divest himself of all interests in the Porterhouse and wishes to remove himself as a Licensee at the premises. (Licensees' Exhibit No. 27.)

Findings Concerning Alleged False Statements

10. Prior to her husband Richard Porter entering federal prison on March 8, 1982, Sunya Porter's duties at the Porterhouse were limited to cooking and doing some bookkeeping. Mrs. Porter had not been filling out service permit applications,

completing annual license renewal forms, writing checks or doing banking for the Porterhouse.

11. On September 10, 1981, the Commission received a license renewal application from Richard and Sunya Porter that indicated food sales during the previous year that amounted to 19 percent of total food and alcoholic beverage sales. (Commission's Exhibit J.)

12. On May 7, 1982, Enforcement Division Senior Inspector William Bartholomew gave verbal instructions to Sunya Porter about the requirement under OAR 845-05-025(4) that a license will not be issued unless good cause is shown if an applicant has less than or is unable reasonably to project at least a 25 percent ratio of food sales to gross sales of food and alcoholic liquor.

13. As her husband Richard Porter was in prison, Sunya Porter completed the OLCC license renewal application for the Porterhouse received by the Commission on August 27, 1982.

14. The license renewal application form received from Sunya Porter on August 27, 1982 asked the Licensees to furnish the following information under question No. 5:

5: DA, DB & DC

Average Monthly Liquor Sales:	\$	_____
Average Monthly Food Sales:	\$	_____
Average Monthly Gross Sales:	\$	_____
Percent of Food to Gross Sales:	%	_____

(Commission's Exhibit E.)

15. On question No. 5 of the license renewal application form received by the Commission on August 27, 1982, Sunya Porter entered one set of figures that was crossed out with a pen and a second set of figures that was not crossed out and that was intended to answer the question. The crossed-out figures (indicated in parentheses) and the second set of figures entered by Mrs. Porter as her answers to question No. 5 are indicated below:

	<u>Crossed-Out Figures</u>	<u>Figures Submitted</u>
Average Monthly Liquor Sales:	<u>\$ (8,500.00)</u>	\$ 9,400.00
Average Monthly Food Sales:	<u>\$ (1,800)</u>	\$ 2,397.00
Average Monthly Gross Sales:	<u>\$(14,500.00)</u>	\$11,797.00
Percent of Food to Gross Sales:	% <u>(8)</u>	25%

(Commission's Exhibit E.)

16. Sunya Porter testified that she is not certain why she originally entered the figures she later crossed out in answer to question No. 5 on the license renewal application form. She testified that the process she may have used to arrive at those figures was to compute the average sales at the Porterhouse between January, 1982 and July 30, 1982.

17. The average monthly food sales at the Porterhouse between January 1, 1982 and July 30, 1982 were \$1,285.

18. Before she turned in the renewal application form ultimately received by the Commission on August 27, 1982, Sunya Porter spoke over the phone with her husband Richard Porter

about question No. 5 on the renewal application form. Mrs. Porter explained that she had arrived at a percentage of food sales to gross sales of eight percent. Mr. Porter expressed the opinion that the eight percent figure was not correct and was low. Mr. Porter advised Mrs. Porter to look at old renewal application forms completed for the Porterhouse for examples of how to complete question No. 5.

19. After talking to her husband about how to fill out question No. 5 on the license renewal application eventually received by the Commission on August 27, 1982, Sunya Porter looked at some of the previous renewal applications submitted to the Commission for the Porterhouse. Mrs. Porter noted that the sales figures on previous applications seemed different in nature from the figures she had initially listed and later crossed out on the application received by the Commission on August 27, 1982.

20. The renewal application forms used by the Commission during the three years prior to 1982 asked for food and liquor sales averages in slightly different formats than found on the 1982 renewal application forms. However, the forms during these three years all asked for average monthly food sales, average monthly alcoholic beverage sales, average monthly gross sales and the percent of food to total gross sales. (Licensees' Exhibits Nos. 29, 30 and 31.)

21. The sales figures that Mrs. Porter left in on question No. 5 on her renewal application form were based on the

sales figures at the Porterhouse for just one month: July, 1982.

22. The monthly sales ledger sheets for the Porterhouse consist of daily entries for food, liquor, beer, miscellaneous and total sales. At the bottom of the columns for these categories, there is a row indicating the totals by category for the month.

23. The Porterhouse's sales ledger for July, 1982 shows certain changes made to the row of totals at the bottom of the ledger. The original total of \$1,896.90 in the food total position was erased and replaced by the figure \$2,397.10. The totals in the liquor, beer and miscellaneous columns were erased and replaced by the same numbers that were erased. The original total sales figure was erased. The original figure was made unreadable because of the erasure. The figure of \$12,756.73 was subsequently entered.

24. The actual total sales by category at the Porterhouse in July, 1982 were as follows:

<u>ACTUAL JULY, 1982 SALES</u>				
<u>FOOD</u>	<u>LIQUOR</u>	<u>BEER</u>	<u>MISC.</u>	<u>TOTAL FOOD LIQUOR AND BEER SALES</u>
\$1,806.60	\$4,716.40	\$4,683.83		\$11,206.83

25. The Applicants' sales ledger through July, 1982 was kept by Sunya Porter's daughter Cindy Eades. Ms. Eades does not recall why or how the row of sales totals by category at the bottom of the ledger for July, 1982 were erased and the same or new figures entered.

26. The Applicants attempt to complete their sales ledger for a given month by the 10th day of the next month so that the figures can be submitted to the Applicants' bookkeeper in Portland.

27. The Porter's August 27, 1982 renewal application asked for the Porterhouse's percentage of "food to gross sales." Based on the average monthly food sales listed by Mrs. Porter of \$2,397 and the average monthly liquor sales listed by Mrs. Porter of \$9,400, the percentage of "food to gross sales" would have been 20.3 percent. However, Mrs. Porter entered a figure of 25 percent. Mrs. Porter's answer of 25 percent is consistent with the percentage of the reported food sales to liquor sales. This percentage ($\$2,397/\$9,400$) is 25.5 percent.

28. The Porterhouse's bookkeeper Cindy Eades customarily attempted to balance the monthly sales ledger by comparing the sum of the daily totals against the sum of the totals by category. On occasion she would submit a monthly ledger sheet to the Portland bookkeeper even though the figures did not balance if she was unable to find the error.

29. The copy of the Porterhouse's sales ledger for July, 1982 that was submitted to the Licensees' Portland bookkeeper contained the following handwritten statement:

"I couldn't get this to balance but did a cross on each date and found numerous mistakes! I'll be more careful."

(Applicants' Exhibit No. 33.)

30. Sunya Porter obtained a G.E.D. degree, the equivalent of a high school diploma, at age 30.

31. Sunya Porter knows how to compute arithmetic averages.

32. An adding machine used at the Porterhouse during July, 1982 malfunctioned on occasion.

33. Mrs. Porter was under increased stress as a result of taking over the operation of the Porterhouse after Mr. Porter entered prison in March, 1982.

Findings Concerning Food Sales

34. Mr. and Mrs. Porter were issued a Dispenser Class A license at the Porterhouse on January 4, 1977.

35. The Licensees initially began offering food service at the Porterhouse on a 24-hour basis. In 1979, a Denny's-style restaurant named Jerry's opened up approximately one block from the Porterhouse. Jerry's was open 24 hours and had a more prominent location on the highway than the Porterhouse. Jerry's cut significantly into the Porterhouse's food sales. The Applicants consequently cut back their food service hours because of their diminished business.

36. The Porterhouse presently serves from its menu between 5:30 a.m. and 1:00 p.m. and then from 5:00 p.m. to 7:00 p.m., seven days a week. During the hours that the menu is not being served, the premises serves soup, chili, sandwiches, pizza and beef stew.

37. The Applicants have made adjustments to the Porterhouse menu over the years to try to cater to the changing

tastes of its patrons. The Applicants have offered their current menu since July, 1982.

38. Items on the Applicants' current menu include the following:

BREAKFAST

(Served Until 11:00 A.M.)

Ham, Bacon or Sausage with 2 eggs
Minced Ham & Scrambled Eggs
Two Eggs, Any Style
Steak & Eggs

Plain Omelette
Cheese Omelette
Mushroom Omelette
Ham & Cheese Omelette
Spanish Omelette
Denver Omelette
Combination

Porterhouse Breakfast Special
Dollar Pancakes
Stack of Pancakes
Short Stack
French Toast
Milk Toast

Coffee
Tea
Hot Chocolate
Soft Drinks
Grapefruit, Orange or
Tomato Juice

Ham
Bacon
Sausage
One Egg
Two Eggs
Hot Cereal
Stack of Toast
Butterhorn

LUNCH

Cold Sandwiches

Beef, Ham or Turkey
BLT
Peppered Beef
Clubhouse
Poor Richard

Side Orders

Potato Salad
Cottage Cheese
Bowl of Fruit
Chef Salad - half
Chef Salad
Green Dinner Salad
Cottage Cheese & Fruit
Cup of Soup
Bowl of Soup
Bowl of Chili
French Fries
Indian Fried Bread

Soup & Sandwich Special
Half Sandwich w/soup
Soup and Bread
Luncheon Omelette

Burger Family

Hamburger
Chili Burger
Bacon Burger
Double Burger
Porterburger

Hot Sandwiches

Patty Melt
Grilled Ham & Cheese
Chicken Patty
Hot Pastrami
Hot Dinner Sandwich
Reuben
Denver
French Dip
Chicken Strip Basket
Chicken Basket
Fish & Chips
Steak Sandwich

DINNERS

Hamburger Steak
Chicken Fried Steak
Breaded Veal Cutlet
Fried Chicken Dinner
Sirloin Steak Dinner
T Bone Steak Dinner

(Licensees' Exhibit No. 16)

In addition to the above, the Applicants also serve daily specials.

39. The Applicants have experienced the following average monthly sales at the Porterhouse:

Average Monthly Sales *

<u>Calendar Year</u>	<u>Food</u>	<u>Alcoholic Beverage</u>	<u>Total Food & Alcoholic Beverage</u>	<u>Percent of Food to Total</u>
1977	\$ 4,398	\$ 4,707	\$ 9,105	48.30
1978	9,629	12,469	22,098	43.57
1979	5,995	12,116	18,111	33.10
1980	3,626	13,814	17,480	20.79
1981	2,620	13,512	16,132	16.24
1982	1,659	11,546	13,205	12.56

* Does not include any food sales to employees.

(Licensees' Exhibit No. 4.)

40. The Applicants' most recent monthly sales at the Porterhouse have been as follows:

Average Monthly Sales *

<u>Month</u>	<u>Food</u>	<u>Alcoholic Beverage</u>	<u>Total Food & Alcoholic Beverage</u>	<u>Percent of Food To Total</u>
<u>1981</u>				
Jul	\$1,612	\$11,357	\$12,969	12.4
Aug	1,826	13,052	14,876	12.3
Sep	1,517	13,866	12,349	10.9
Oct	1,396	13,386	14,782	9.4
Nov	986	16,134	17,120	5.8
Dec	1,595	18,409	20,004	8.0
<u>1982</u>				
Jan	1,399	17,986	19,385	7.2
Feb	1,284	13,325	14,609	8.8
Mar	1,464	13,623	15,087	9.7
Apr	1,540	14,012	15,552	9.9
May	974	9,770	10,744	9.1
Jun	1,055	9,075	10,130	10.4
Jul	1,807	9,400	11,207	16.1
Aug	2,204	8,818	11,021	20.0
Sep	2,071	9,199	11,269	18.4
Oct	2,512	10,669	13,181	19.0
Nov	1,950	10,480	12,430	15.7
Dec	1,648	12,205	13,853	11.9
<u>1983</u>				
Jan	2,070	13,164	15,234	13.6
Feb	1,464	10,168	11,632	12.6
Mar	3,390	13,515	16,095	20.0

* Does not include any food sales to employees

41. The food sales listed in Findings of Fact Nos. 37 and 38 above do not include a five dollar food credit per shift that the Applicants have been giving their employees since being licensed at the Porterhouse in 1977. The Applicants provide their employees an average of \$881.50 per month in meal credits.

42. The addition of the \$881 per month in meal credits given by the Licensees to their employees would increase the percentage of food sales to total alcoholic beverage sales from those figures reported in the Findings of Fact Nos. 37 and 38 above. As an example, the addition of the meal credits would impact the sales figures and food sales percentage as follows for the months indicated:

Sales for Selected Periods
With Employee Meal Credit Included

<u>Month and/or Year</u>	<u>Food Sales</u>	<u>Alcoholic Beverage Sales</u>	<u>Total Sales</u>	<u>Percent of Food To Total</u>
<u>1982</u>				
Jan	\$2,951	\$13,164	\$16,115	18.3
<u>1983</u>				
Feb	2,345	10,168	12,513	18.7
Mar	4,135	13,515	17,650	23.4
<u>1982</u>				
Full Year	2,540	11,546	14,086	18.0

43. The Licensees have invested the following amounts in the Porterhouse:

Licensees' Investment in Porterhouse

<u>Purchased and License Issued</u>	<u>January 4, 1976</u>
Purchase Price	125,000.00
Remodel and Equipment - 1976	50,636.00
Remodel and Equipment - 1978	3,524.00
Remodel - 1979	
Move Backdoor, partition restaurant	13,668.00
Repair and Maintenance - 1980	14,329.00
Repair and Maintenance - 1981	
Chain parking lot, back door closing	15,139.00

44. The \$15,139 expenditure indicated in the Finding of Fact above arose from the Licensees' efforts to chain off the back parking lot and close the back door to the premises in the evening hours to avoid problems that had been occurring in the parking lot behind the Porterhouse. The Licensees took these steps at the suggestion of and in cooperation with the City of Madras. R.B. Evans, Sr., Director, OLCC Enforcement Division, wrote the Licensees a letter acknowledging the improvements that the Licensees had made to their operation and acknowledging favorable comments concerning these improvements that were made by Madras Police Chief Lowry. (Licensees' Exhibit No. 24.)

45. The Licensees now block off the parking lot in back of the Porterhouse at 7:00 p.m. each evening and lock the back door to the premises at 9:00 p.m. each evening to avoid the problems that had been occurring in 1981 in the back parking lot. However, the back parking lot to the Porterhouse provides the separate access to the dining portion of the premises. When the back door is closed off, patrons going to the dining room must traverse through the lounge. Thus the Licensees' efforts to control the back parking lot situation may have hindered dining room patronage in the evening to a degree.

46. The Applicants may explore an arrangement to leave the back door to the Porterhouse unlocked to provide separate access to the dining room in the evening.

47. Madras is located approximately 12 miles from the Warm Springs Indian Reservation. The Porterhouse has a number of Indian patrons. The Porterhouse's Indian patrons purchase a

relatively small amount of food at the premises in comparison to alcoholic beverage purchases. The Licensees are attempting to offer some traditional Indian foods, such as Indian fry bread, in an effort to increase food sales to their Indian patrons.

48. Licensee Richard Porter characterizes the Porterhouse as a workingman's establishment.

49. The Licensees have recently begun trying to develop a catering business at the Porterhouse in an effort to stimulate food sales at the premises.

50. The Licensees have not received any violation tickets from the Commission concerning the Commission's food service regulations.

51. In an effort to increase food sales at the Porterhouse, the Licensees anticipate spending \$3,000 on advertising for the Porterhouse in 1983 compared to \$1,500 spent for advertising in 1982.

52. Licensee Richard Porter was aware in 1977 when first licensed at the Porterhouse that the Commission had an Administrative Rule making it a violation for a licensee not to maintain a 25 percent average of food sales to total food and alcoholic beverage sales. Mr. Porter was under the impression that this regulation and the 25 percent food sales requirement were subsequently dropped. He was not aware that the Commission had retained the 25 percent requirement as a criterion for license renewal under OAR 845-05-025(4). Mr. Porter became aware that

the 25 percent requirement was still enforced through the renewal criterion in OAR 845-05-025(4) when informed by his wife of the verbal instructions she had received to this effect from Senior Inspector Bartholomew on May 7, 1982.

53. The Licensees have been taking steps recently to improve food sales at the Porterhouse. These steps include hiring a new cook, a new menu, better policing of the bar, an increased advertising budget, and efforts to cater to new patrons interested in the food service.

DISCUSSION

At its October 24, 1983 meeting, the Commission approved Richard Porter's request to be dropped as a partner and licensee at the Porterhouse. The Commission deems this a withdrawal of the application for renewal of Mr. Porter's interest in the license, leaving Mrs. Porter alone as the Applicant for renewal.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. ORS 472.160 (4)(d) provides as follows:

The Commission may refuse to license any applicant if it has reasonable grounds to believe that the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, including provisions of this chapter, or has been convicted at any time of a felony. ORS 472.160(4)(d).

- OAR 845-05-025(7) provides as follows:

The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

- . . .
- (7) The applicant has been convicted of a felony or of a class A misdemeanor involving moral turpitude. OAR 845-05-025(7).

Richard A. Porter has been convicted of two felonies. He was convicted on November 23, 1981 in Jefferson County, Oregon Circuit Court of wrongful acceptance of payment from Adult and Family Services Division, a class C felony. He was convicted on February 22, 1982 of knowingly and intentionally distributing a quantity of codeine phosphate, a schedule III narcotic drug controlled substance, a schedule III felony.

However, on October 24, 1983 the Commission granted Mr. Porter's request to withdraw as a partner and licensee at the Porterhouse. The Commission deems this as a withdrawal of the application for renewal of Mr. Porter's interest in the license, leaving Mrs. Porter alone as the Applicant for renewal. The record does not show that Mrs. Porter has been convicted of any felonies, Class A misdemeanors or Oregon liquor laws. Her renewal application should therefore not be denied under ORS 472.160(4) and OAR 845-05-025(7).

2. The Commission may refuse to license any applicant if it has reasonable ground to believe that the applicant has made false statements to the Commission. ORS 472.160(4)(b).

The Commission may refuse to process or may deny an application if the applicant provides false or misleading information to the Commission. OAR 845-05-015(3).

Sunya Porter made a false statement to the Commission in the sales figures reported on question No. 5 of the license

renewal application received by the Commission on August 27, 1982. The false statement made on this portion of the renewal application consists of the figures entered by Mrs. Porter for the average monthly food sales, average monthly gross sales and percent of food to gross sales for the Porterhouse.

The sequence of events indicates that Mrs. Porter overstated the food sales at the Porterhouse in an attempt to meet the Commission's 25 percent food sale requirement under OAR 845-05-025(4). Mrs. Porter originally entered but then scratched out a \$1,800 figure in the average monthly food sales blank on question No. 5 of the renewal application. This indicates that she was aware that the total food sales on the July, 1982 sales ledger added up to approximately \$1,800. The true figure was \$1,806.60. The original figure calculated and entered on the ledger of \$1,896.90 was subsequently erased and replaced by the incorrect figure of \$2,397.10. Mrs. Porter then entered the figure \$2,397 on the food sales portion of question No. 5 on the license renewal application.

Mrs. Porter had been specifically advised on May 7, 1982 by Senior Inspector William Bartholomew concerning the Commission's requirement that a 25 percent ratio of food sales to total gross food and alcoholic beverage sales must be maintained for license renewal under OAR 845-05-025(4).

The figures entered by Mrs. Porter on the form indicate that Mrs. Porter believed the percentage addressed by the rule was the percentage of food sales to alcoholic beverage sales, rather than the percentage of food to total food and alcohol

required under OAR 845-05-025(4). Thus, Mrs. Porter reported a percentage of food sales to gross sales of 25 percent. The figures indicate then that Mrs. Porter attempted to choose an inflated food sales figure that would meet the Commission's 25 percent requirement.

The Licensees presented evidence that a Porterhouse calculator was malfunctioning in July, 1982. This does not support a conclusion however that the new and incorrect July, 1982 food sales figure of \$2,397 was a result of error by the calculator. The same correct sales totals were entered in the columns for other categories on the July, 1982 ledger sheet after the erasure of the initial entries. The large difference between the original July ledger food total entry of \$1,896.90 and the false figure of \$2,397.10 would have prompted a recalculation and discovery that the \$2,397.10 figure was in error had this not been a case of an intentional false statement.

Although the Commission concludes that Mrs. Porter made a false statement on her renewal application, several factors indicate that these statements are not so serious as to warrant license nonrenewal. In particular, Mrs. Porter was not familiar with the filling out of license renewal forms. The blacked-out answers that Mrs. Porter left on the form show her confusion and show to some degree a lack of appreciation on her part about the significance of submitting inaccurate information. Mrs. Porter was under a great deal of stress at the time she submitted the license renewal form in question. She was

suddenly left to run the entire business when her husband entered prison.

The Commission concludes that in light of all the circumstances, Mrs. Porter's false statements do not warrant license nonrenewal under ORS 472.160(4)(b) and OAR 845-05-015(3).

3. The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

. . .

- (4) The applicant seeks a Dispenser Class "A" license under ORS 472.110(2) and has less than or is unable reasonably to project at least 25 percent ratio of food sales to gross sales of food and alcoholic liquor. OAR 845-05-025(4).

Failure by a Class "A" Dispenser licensee to maintain at least a 25 percent ratio of food sales to gross sales of food and alcoholic liquor may be grounds for refusal to renew a license unless the licensee has fully complied with the requirements of this rule and adequately demonstrates that a serious and substantial effort has been made to emphasize food service. OAR 845-08-015(5).

OAR 845-08-015(5) was adopted by the Commission after OAR 845-05-025(4). This indicates an intention by the Commission that good cause for license renewal is shown under OAR 845-05-025(4) where the licensee has made a serious and substantial effort to emphasize food service as expressed in OAR 845-08-015(5).

The Licensees appear to have made a serious and substantial effort to emphasize food service at the business. The Licensees offer a fairly well-rounded and extensive menu for at

least two hours at breakfast, lunch and dinner. Food sales have recently been on the rise. When employee meal credits are included, the most recent food sales of 23.4 percent in March, 1983 have nearly met the Commission's minimum requirement of 25 percent food sales.

The fact that the former main operator of the premises, Richard Porter, was in prison during 1982 would certainly have been an obstacle to the normal operation of the business. The Porters seem to have been genuinely unaware prior to receiving verbal instructions in May, 1982 that the Commission had retained a 25 percent food sales requirement for purposes of license renewal. The Applicants appear on their way to achieving the 25 percent requirement and are making serious and substantial efforts towards the provision of food in compliance with OAR 845-08-015.

The Commission concludes in light of the above that the license renewal application should not be denied under OAR 845-05-025(4) and OAR 845-08-015(5).

ULTIMATE CONCLUSIONS OF LAW

The Commission has granted Mr. Porter's request to be dropped as a partner and licensee at the Porterhouse. The Commission deems this as a withdrawal of the application for renewal of Mr. Porter's interest in the license, leaving Mrs. Porter as the sole Applicant for renewal.

The Porterhouse has been making a serious and substantial effort to raise its food percentage and to emphasize food sales. In light of the surrounding circumstances, Mrs.

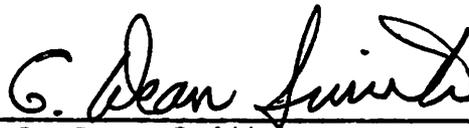
Porter's false statement concerning sales figures on the renewal application is not so serious as to warrant license nonrenewal. The record shows no convictions of Mrs. Porter for felonies, Class A misdemeanors or Oregon liquor laws. The Commission concludes in light of the above that Mrs. Porter's renewal application is demanded by the public interest and convenience. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the application by Sunya Porter for renewal of a Dispenser Class A (DA) license at the Porter-house, 331 Fifth Street, Madras, Oregon, be GRANTED.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 24th day of October, 1983.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.